IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.841 OF 2006

Gorakh Hari Dhole .....Appellant.

V/s

Bai Shankar Dhole & Ors. ..... Respondents.

Mr. Manoj Chatge i/b Mr. S.D. Dharmadhikari for the appellant.

Mr. A.B. Avhad for Respondents.

CORAM: V.M. KANADE, J.
DATE : 21st August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the appellant and the learned Counsel appearing on behalf of Respondents.

2. Appellant takes exception to the order passed by the Lower Appellate Court whereby decree for partition which was granted in favour of the appellant herein was set aside and the suit for partition was dismissed.

3. Appellant is the original Plaintiff who had filed a suit for partition and separate possession. Defendants filed their written statement and inter alia contended that the appellant - plaintiff was not the son of Hari. The trial court

decreed the suit, relying on mutation entry in which the name of the appellant was shown as a son of Hari. The respondents preferred an appeal before the District Court and pointed out that the other evidence which was adduced by the Defendants was not considered by the trial court. Defendants have produced voluminous evidence to show that the appellant was trying to take advantage of the fact that his name was entered in the mutation record along with that of deceased Hari. Defendants have brought on record that the appellant was never residing with the deceased at any time. The Lower Appellate Court has, in paras 7 and 8 of its judgment, considered the evidence adduced by both parties at length and recorded a finding that the appellant has not established that he is a son of deceased Hari. Since this is a finding of fact recorded by the Lower Appellate Court and since there is no substantial question of law raised in this second appeal, there is no reason to interfere with the impugned order. Second appeal is dismissed in limine.

(V.M. KANADE, J.)